

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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VINCENT CORTESE, on behalf of himself  
and all others similarly situated,

Plaintiff,

-against-

**ORDER**  
CV 04-956 (DRH)(ARL)

EDGE SOLUTIONS, INC.,

Defendant.

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**LINDSAY, Magistrate Judge:**

Before the court is the plaintiff's motion dated March 27, 2006, seeking to compel responses to his Interrogatories, Request for the Production of Documents and Request for Admissions of Facts and his Motion to Deem the Facts Admitted. The defendant did not timely respond to the motion, but has sent the court a letter requesting a premotion conference. For the reasons set forth below, the motions are granted.

On October 14, 2005, counsel for the defendant, Mr. Regan, indicated that he intended to move to withdraw. In response, the court directed him to file his motion to withdraw by October 28, 2005, but he did not do so. On November 30, 2005, the undersigned held an initial telephone conference during which time Mr. Regan once again reported to the court that he would be submitting a motion to withdraw. Based on Mr. Regan's representation, the undersigned delayed entering the discovery schedule and provided Mr. Regan with an additional week to submit his motion to be relieved as counsel. Once again, Mr. Regan did not do so. Accordingly, on December 13, 2005, the court entered a scheduling order and warned Mr. Regan that as the attorney of record for the defendant, he was required to continue to act on its behalf.

On January 10, 2006, the plaintiff served the defendant with discovery requests consisting of Interrogatories, Request for the Production of Documents and Requests to Admit. When the defendant failed to respond, plaintiff's counsel forwarded a letter to Mr. Regan indicating that the responses were overdue and requesting that the defendant respond in ten days.<sup>1</sup> Despite counsel's letter and the court's warning that Mr. Regan continue to act on behalf of the defendant, the defendant has not responded to the requests. Accordingly, the motion to compel responses to the plaintiff's discovery requests is granted, as unopposed.

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<sup>1</sup>In the future, counsel for the plaintiff must make a better effort to confer with the defendant in an attempt to resolve a discovery dispute. The court does not consider sending counsel for the defendant a letter indicating that if discovery is not received, the defendants will seek court intervention sufficient. However, given the history of this case, the court will address the merits of the motion at this time.

The consequence of a failure to respond to a Rule 36 request for admission is automatic. If a recipient of a Request to Admit fails to respond to it in writing within thirty days, the matters set forth in the Request are admitted. Thus, the matters set forth in the plaintiff's Request for Admission are, for the purposes of this action, deemed admitted.

The defendant's request for a premotion conference is denied. The request for a premotion conference regarding the motion to dismiss should be made to the District Judge.

Dated: Central Islip, New York  
April 10, 2006

**SO ORDERED:**

\_\_\_\_\_/s/\_\_\_\_\_  
ARLENE R. LINDSAY  
United States Magistrate Judge